

Office of the Secretary, Interior

§ 4.1183

persons shall be given written notice of the time and place of the hearing at least 5 working days prior thereto.

§ 4.1168 Amendments to pleadings.

(a) An application for review may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the administrative law judge upon proper motion.

(b) Upon receipt of an initial or amended application for review or subsequent to granting leave to amend, the administrative law judge shall issue an order setting a time for filing an amended answer if the judge determines that such an answer is appropriate.

§ 4.1169 Failure to state a claim.

Upon proper motion or after the issuance of an order to show cause by the administrative law judge, an administrative law judge may dismiss at any time an application for review which fails to state a claim upon which administrative relief may be granted.

§ 4.1170 Related notices or orders.

(a) An applicant for review shall file a copy of any subsequent notice or order which modifies, vacates, or terminates the notice or order sought to be reviewed within 10 days of receipt.

(b) An applicant for review of a notice shall file a copy of an order of cessation for failure timely to abate the violation which is the subject of the notice under review within 10 days of receipt of such order.

(c) If an applicant for review desires to challenge any subsequent notice or order, the applicant must file a separate application for review.

(d) Applications for review of related notices or orders are subject to consolidation.

§ 4.1171 Burden of proof in review of section 521 notices or orders.

(a) In review of section 521 notices of violation or orders of cessation or the modification, vacation, or termination thereof, including expedited review under § 4.1180, OSM shall have the burden of going forward to establish a prima facie case as to the validity of the notice, order, or modification, vacation, or termination thereof.

(b) The ultimate burden of persuasion shall rest with the applicant for review.

EXPEDITED REVIEW OF SECTION 521(a)(2)
OR 521(a)(3) ORDERS OF CESSATION

§ 4.1180 Purpose.

The purpose of §§ 4.1180–4.1187 is to govern applications filed under section 525(b) of the act for expedited review of orders of cessation for which temporary relief has not been granted under section 525(c) or section 526(c) of the act. If a person is qualified to receive a 30-day decision under these regulations, he may waive that right and file an application under § 4.1164, and the procedures in § 4.1160 *et seq.* shall apply. If there is a waiver as set forth in § 4.1186, the final administrative decision shall be issued within 120 days of the filing of the application.

§ 4.1181 Who may file.

(a) An application for review of an order of cessation may be filed under this section, whenever temporary relief has not been granted under section 525(c) or section 526(c) of the act, by—

(1) A permittee who has been issued an order of cessation under section 521(a)(2) or section 521(a)(3) of the act; or

(2) Any person having an interest which is or may be adversely affected by the issuance of an order of cessation under section 521(a)(2) or section 521(a)(3) of the act.

(b) A permittee or any person having an interest which is or may be adversely affected by a section 521(a)(2) or section 521(a)(3) order of cessation waives his right to expedited review upon being granted temporary relief pursuant to section 525(c) or section 526(c) of the act.

§ 4.1182 Where to file.

The application shall be filed in the Hearings Division, 801 North Quincy Street, OHA, Arlington, Va. 22203.

[43 FR 34386, Aug. 3, 1978, as amended at 67 FR 4368, Jan. 30, 2002]

§ 4.1183 Time for filing.

(a) Any person intending to file an application for expedited review under section 525(b) of the act shall notify the